

D.T.E. 98-58

Petition of Teleport Communications Group Inc., pursuant to 220 C.M.R. § 1.04, requesting the Department of Telecommunications and Energy to establish rules regarding collocation requests made to the incumbent local exchange carrier by a competitive local exchange carrier. The petitioner's request is to expedite resolution of disputes.

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- INTRODUCTION

On May 14, 1998, Teleport Communications Group Inc. ("TCG") filed with the Department of Telecommunications and Energy ("Department") a petition asking the Department to establish procedures by which New England Telephone and Telegraph Company, d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic"), must consider requests for physical collocation by competitive local exchange carriers ("CLECs"). In the Telecommunications Act of 1996 ("Act"), Congress directed incumbent local exchange carriers ("ILECs") such as Bell Atlantic to make space available in their central offices for certain equipment of CLECs unless space considerations or technical reasons preclude such collocation.<sup>(1)</sup>

Prompted by its experience at Bell Atlantic's Westborough central office ("CO"), where TCG was initially denied but later awarded physical collocation space,<sup>(2)</sup> TCG's petition requests that the Department establish collocation procedures affecting all 257 of Bell Atlantic's COs. TCG's petition was docketed as D.T.E. 98-58. On March 31, 1999, the FCC released its Advanced Telecommunications Capability Order setting forth, among other things, minimum collocation guidelines.

## II. PROCEDURAL HISTORY

Pursuant to notice duly issued and published on August 24, 1999, the Department held a public hearing and procedural conference on September 9, 1998, at which time the Department granted the petitions to intervene of LBC Telephony, Inc., MCI WorldCom, Inc. ("MCI") and NorthPoint Communications, Inc. The Department also granted the petitioner's request to be referred to prospectively as AT&T Communications of New England ("AT&T") to reflect its acquisition by AT&T. On October 16, 1998, the hearing officer granted Sprint Communications Company L.P.'s ("Sprint") timely filed petition for intervention. Intermedia Communications Inc. filed a petition for intervention on October 23, 1998, approximately a month and a half after the deadline for intervention. The hearing officer found that Intermedia demonstrated good cause for its late-filed petition and that it would be substantially and specifically affected by this proceeding, and granted its petition for intervention on October 26, 1998.

Department staff and parties to this proceeding toured the Westborough CO on October 2, 1998 and Bell Atlantic's Franklin Street, Boston CO on October 13, 1998. The second tour was followed immediately by a technical session. On December 4, 1998, the Department held an evidentiary hearing. At the hearing, AT&T presented the testimony of Frank R. Hoffmann, Jr., regional director of carrier relations for AT&T's local services; Bell Atlantic presented the testimony of Karen A. Maguire, director of project management for Bell Atlantic's large customer networks; MCI presented the testimony of Roy Lathrop, economist in the public policy and governmental advocacy department of MCI; and Sprint presented the testimony of Paul D. Reed, group manager-local market development for Sprint's Northeastern region.

AT&T, Bell Atlantic, MCI, and Sprint filed initial briefs with the Department on December 15, 1998 and all four parties filed reply briefs on December 23, 1998.

### III. POSITIONS OF THE PARTIES<sup>(3)</sup>

#### A. AT&T

AT&T states that it is necessary for the Department to establish rules governing the processing of CO collocation requests made to Bell Atlantic by CLECs in order to ensure that CLECs are able to gain prompt entry into the local service market (AT&T Brief at 2). AT&T emphasizes that the Act requires Bell Atlantic and other ILECs to provide space for physical collocation of equipment necessary for interconnection or access to unbundled network elements ("UNEs") at the premises of the local exchange carrier unless the ILEC demonstrates to the Department that physical collocation is not technically possible (*id.* at 3). AT&T also points out that the FCC recognized that ILECs have the incentive and capability to impede competitive entry by minimizing the amount of space that is available for collocation by their competitors and that the FCC encourages state commissions to implement rules governing the processing of collocation requests (*id.* at 5).

AT&T states that Bell Atlantic requires collocation before UNEs will be provided to CLECs and this requirements affects the CLECs' ability to compete with Bell Atlantic in the local service market. Accordingly, it is imperative that collocation requests be processed as quickly as possible and that procedures be established to allow CLECs and the Department to investigate quickly and thoroughly any Bell Atlantic representation that no collocation space is available in a CO (*id.*). AT&T states that its experience with Bell Atlantic's processing of its request for collocation space at Bell Atlantic's Westborough CO, where it took approximately a year to obtain space and where AT&T was forced to pay for both physical and virtual collocation as a result of Bell Atlantic's delays, illustrates the need for strict deadlines for processing collocation requests and for close review of any Bell Atlantic representation that collocation space is not available (*id.* 10-11).

AT&T has proposed a timetable of procedures, which it states is fair and reasonable. This proposal calls for: Bell Atlantic to respond to a request for collocation and, if the request is denied, file an exemption request and supporting documentation with the Department, within eight business days of the request; a site inspection and audit team (consisting of Bell Atlantic, CLEC and Department representatives) review to be completed within 18 days of the collocation request; audit team findings and recommendations to be submitted to the Department within 28 days of the collocation request; and a Department Order to be issued within 43 days of the collocation request (*id.* at 12). AT&T states that the collocation response time contained in its proposal is reasonable, consistent with public commitments made by Bell Atlantic, and longer than a similar deadline adopted in at least one other state (AT&T Reply Brief at 4-5). AT&T argues that

Bell Atlantic should be required to file an exemption request with the Department at the same time it notifies a CLEC that no collocation space is available because a thorough review of CO space must be undertaken before a request is denied and no additional time should be needed to justify an exemption request (AT&T Brief at 13-14). AT&T also argues that in order for collocation to be provided on a nondiscriminatory basis as required by the Act, CO space used for administrative purposes or for unused equipment must be made available to CLECs just as such space is considered available to Bell Atlantic for placement of its own equipment (id. at 14). AT&T states that CO site visits, as well as space utilization review by an audit team that includes Department staff, are necessary to assess promptly a Bell Atlantic representation that collocation space is not available (id. at 15-16).

AT&T notes that Bell Atlantic has committed to publish information about collocation space availability in COs on a public web site and requests that Bell Atlantic be ordered to include updated information on the amount of collocation space available at all COs (id. at 17-18). AT&T argues that virtual collocation requests should be fully implemented within 60 business days as Bell Atlantic has committed to doing in its southern states (id. at 18). Finally, AT&T does not object to the warehousing space reclamation procedures contained in Bell Atlantic's FCC Tariff 1, but asks the Department to confirm that if a CLEC's failure to interconnect with Bell Atlantic service is the result of Bell Atlantic's failure to make the service fully available, the CLEC will not be deemed to be warehousing the space (id. at 19).

#### B. Bell Atlantic

The Department should establish reasonable procedures consistent with the requirements of the Act, which would apply to prospective denials of physical collocation requests (Bell Atlantic Brief at 1). The time frames and exemption filing process proposed by AT&T and other carriers in this proceeding are, however, unreasonably short and would require extensive detail that is both excessive and unduly burdensome for Bell Atlantic to produce (id. at 6). Accordingly, Bell Atlantic recommends the Department's adoption of the following procedures.

First, Bell Atlantic proposes a 14-business-day interval for responding to initial physical collocation requests (id.). This interval is consistent with the response time previously negotiated between AT&T and Bell Atlantic and the interval adopted by the Department's arbitrator in an MCI/Bell Atlantic arbitration proceeding<sup>(4)</sup> (Exh. BA-1, at 9; Bell Atlantic Brief at 6). The interval is predicated on Bell Atlantic's receipt of a carrier's completed application for a physical collocation arrangement<sup>(5)</sup> and is necessary for Bell Atlantic to conduct a thorough evaluation of space availability in a CO, particularly for initial collocation requests in an office or where considerable work efforts are required to identify whether suitable space is available in already collocated offices since

the process is dynamic, changing with each CLEC request (Bell Atlantic Brief at 7-9).

Second, Bell Atlantic proposes to file an exemption request with the Department within 20 days after its written notice to the CLEC that its physical collocation request has been denied (Exh. BA-1, at 10; Bell Atlantic Brief at 10). This recommended interval would provide Bell Atlantic with sufficient time to compile the documentation required to demonstrate that space is unavailable in a CO (id.). Such data should include: (1) detailed, updated floor plans; (2) an analysis of the CO equipment space and the environmental, safety, security and other factors involved in determining that space is unavailable; (3) existing physical collocation arrangements in that CO; and (4) future plans for reclamation of space or potential building expansion opportunities, which may result in available space in the near term (i.e., within six months) in that CO (Exh. BA-1, at 4-5, 10-11; Bell Atlantic Brief at 10).

Contrary to AT&T's Petition, Bell Atlantic asserts that it should not be required to develop and provide equipment utilization levels for the CO, nor should Bell Atlantic be forced to explain its use of administrative space (Exh. BA-1, at 11; Bell Atlantic Brief at 11). Bell Atlantic argues that to do so would inappropriately turn the exemption request process into a prudency review of Bell Atlantic's internal operations and an attempt to redesign Bell Atlantic's CO equipment layout, which could adversely affect Bell Atlantic's provision of services to its customers (id.). Bell Atlantic states that the fact that it is obligated to provide CLECs with collocation space is not an open invitation to micromanage Bell Atlantic's reasonable use of its own property (id.).

Likewise, Bell Atlantic argues that it should not automatically be required to conduct a site visit for each denial of a collocation request, nor should an "audit team" be created to examine the site and issue a report,<sup>(6)</sup> as AT&T erroneously suggests (Bell Atlantic Brief at 12). Rather, Bell Atlantic believes that the Department should determine whether a site visit is necessary at all based on the information provided in Bell Atlantic's exemption request (Exh. BA-1, at 11; Exh. BA-2, at 6; Bell Atlantic Brief at 12). Carriers would also have access to that data and could petition the Department for a site review, but the ultimate decision of whether to permit an on-site visit would rest with the Department (Exh. BA-2, at 6; Bell Atlantic Brief at 12).

Finally, Bell Atlantic's collocation web site for Massachusetts central offices is modeled after the existing New York web site, which lists the type of collocation (physical and/or virtual) available in offices where collocation already exists or has been requested (Bell Atlantic Brief at 14). Bell Atlantic asserts that it is neither feasible nor advisable for Bell Atlantic to include the actual square footage available in the offices listed because of the constantly changing nature of those data and the artificial demand for space in an office created by the availability of such data (Exh. BA-2, at 6; Tr.1:155-56, 185; Bell Atlantic Brief at 13-14). Bell



Atlantic also opposes the proposal by AT&T and other carriers to list every Massachusetts CO on the web site, which is not consistent with the parameters of the New York web site and would require a massive work effort by Bell Atlantic to gather and analyze data for all of its offices (Bell Atlantic Brief at 13).

### C. MCI

MCI recommends that the Department adopt the proposal of AT&T for the processing of physical collocation requests submitted by CLECs to Bell Atlantic (MCI Brief at 3-4). MCI witness Roy Lathrop explained that the adoption of the AT&T proposal would enable the Department to ensure that requests of CLECs for physical collocation space are treated even-handedly, without the imposition of unreasonable or discriminatory terms and conditions. In particular, MCI supports the time intervals proposed by AT&T for the processing of physical collocation requests and resolving claims for exemption from physical collocation obligations made by Bell Atlantic (*id.* at 7-15). MCI also recommends that the Department permit tours of COs to judge physical collocation space and involve staff early on in order to resolve any dispute between a CLEC and Bell Atlantic (*id.* at 15-18).

MCI also recommends that the Department require Bell Atlantic to place on its proposed web site more detailed information about the square footage available for collocation at Bell Atlantic's COs (as a starting point, such information to be provided for those COs in which physical collocation exists or has been requested). According to MCI, the availability of this information would reduce the number of physical collocation requests which CLECs are forced to submit in the absence of critical information on the availability of physical collocation space and enable all parties to focus upon the timely implementation of physical collocation (*id.* at 11-13). In order to maximize the opportunities for facilities-based local exchange competition, MCI urges the Department to approve physical collocation alternatives, such as adjacent physical collocation, under which the CLEC may locate its facilities in a building nearby the ILEC's CO and connect its facilities to the ILEC's CO facilities (*id.* at 18-19).

Finally, MCI states that it is unnecessary for the Department to adopt at this time any specific requirements for the reclamation of physical collocation space assigned to CLECs by "eviction" or forced subletting. There is no evidence that any CLEC has been denied physical collocation space because of another CLEC's "warehousing" of physical collocation space. MCI recommends that the Department should allow for experience to develop under existing procedures of Bell Atlantic (*e.g.*, interconnection agreement provisions covering the issue of physical collocation space reclamation) and need not adopt additional requirements (*id.* at 19-20).

### D. Sprint

Sprint argues that the Department should establish collocation requirements that give CLECs a fair and reasonable opportunity to compete in the Massachusetts exchange market (Sprint Brief at 1). Sprint supports the adoption of rules that would require Bell Atlantic to respond to collocation requests within eight business days (id. at 3). This period is consistent with Bell Atlantic's CLEC Handbook, demonstrating Bell Atlantic's willingness and ability to respond to collocation requests (id.). Within this same period, Bell Atlantic should be required to file an exemption request with the Department if Bell Atlantic determines that no space is available in a CO (id. at 4). Assuming Bell Atlantic conducted a complete examination of a central office and reviewed all necessary documentation before advising a CLEC that no space is available, Bell Atlantic should be prepared to file its exemption request at the time it notifies a CLEC of the unavailability of space (id.).

Sprint states that Bell Atlantic should be directed to provide detailed information regarding its use of CO equipment and available space (id. at 5). Without sufficiently detailed information, the Department will not be able to make an informed decision about the availability of space (id.). Sprint supports AT&T's recommendation that Bell Atlantic provide specific information with its exemption requests.<sup>(7)</sup> Sprint recommends further that Bell Atlantic be prohibited from reserving space for deployment of its CO equipment for more than one year, on a rolling basis (id.).

Furthermore, Sprint states that the carrier requesting collocation, in addition to Department staff, should be able to tour any CO where Bell Atlantic denies a collocation request (id.). This tour should take place within ten (10) business days of the filing of an exemption request (id. at 6). By examining the facilities, the carrier requesting collocation and Department staff will have an opportunity to explore all possible options for collocation in a given CO, without relying exclusively on Bell Atlantic's assessment (id.). Within the same period, the parties should file their recommendations with the Department (id.). A final decision should be rendered within 15 business days of the parties' filing their recommendations (id. at 6-7).

Equally as important as the process and timelines to be followed when collocation is requested is the dissemination of pertinent information regarding collocation, according to Sprint (id. at 7). A carrier requesting collocation should be able to obtain sufficient information from Bell Atlantic to determine whether a considerable investment in collocation would further that company's business objectives (id.). In this regard, Sprint argues that Bell Atlantic should be required to provide average loop length, percentage of loops longer than 18,000 feet from the CO, and the percentage of customers served by digital line concentrators (id.).

Sprint contends that it needs this information before entering into expensive collocation arrangements (id. at 7-8).

#### IV. STANDARD OF REVIEW

Section 251(c)(6) of the Act directs Bell Atlantic to provide for the physical collocation of equipment necessary for interconnection or access to UNEs on Bell Atlantic's premises using rates, terms, and conditions that are just, reasonable, and nondiscriminatory. However, Bell Atlantic may offer virtual collocation in lieu of physical collocation if Bell Atlantic demonstrates to the Department that physical collocation is not practical for technical reasons or because of space limitations. See 47 U.S.C. 251(c)(6).

The FCC has promulgated regulations implementing section 251(c)(6) in an earlier Order<sup>(8)</sup> and, most recently, in its Advanced Telecommunications Capability Order.<sup>(9)</sup> In the latter Order, the FCC makes it clear that the standards it adopts are minimum requirements and that states will continue to have the flexibility to respond to specific issues by imposing additional requirements. Advanced Telecommunications Capability Order at ¶ 23. As noted by the FCC, "[s]tate commissions play a crucial role in furthering the goals of [the FCC's] collocation rules by enacting rules of their own that, in conjunction with federal rules, ensure that collocation is available in a timely manner and on reasonable terms and conditions." Id.

State commissions may regulate such transactions and associated disputes in a way that supplements but does not conflict with the FCC's rules or Orders, or with the Act. State regulation must provide for timely and fair resolution of disputes. States must set rules whose clarity will prevent and not promote disputes. The object of these rules is to achieve broad public access to competitive telecommunications services as quickly as possible through physical collocation. The findings contained in this Order build upon the FCC's standards to provide greater certainty to the collocation process, for example, by establishing intervals by which Bell Atlantic shall provide CLECs with information and physical collocation space. The goal of this

Order is to remove barriers to entry and to speed the deployment of advanced services. See Id. at ¶ 22.

#### V. ANALYSIS AND FINDINGS

In its Local Competition Order, the FCC stated that ILECs "have the incentive and capability to impede competitive entry by minimizing the amount of space that is available for collocation by competitors." Local Competition Order, 11

FCC Rcd 15499 at ¶ 585 (1996). The FCC reiterated this concern in its Advanced Telecommunications Capability Order at ¶ 54 (noting the significant competitive harm that new entrants suffer when collocation arrangements are unnecessarily delayed).

In its petition, AT&T suggests that additional collocation rules, such as a timetable of procedures and the creation of an audit team, will ensure that CLECs are able to gain prompt entry into the local service market. The Department finds that the increasing numbers of CLEC requests for space and the rapidity in which collocation space in Bell Atlantic's COs is becoming exhausted warrant physical collocation requirements beyond those established by the FCC. Bell Atlantic has proposed a limited response to this growing demand for space. Bell Atlantic suggests that we merely set a deadline by which Bell Atlantic must process collocation applications. For reasons we discuss below, this limited approach is, alone, insufficient; and so we decline to limit the exercise of our authority as recommended by Bell Atlantic.

This Order goes further and addresses the following physical collocation issues:

(A) response times for physical collocation requests, CO inspections, and incomplete applications; (B) timing and substance of notification of space exhaustion filing; (C) CLEC tours of Bell Atlantic's COs; (D) information to be included on Bell Atlantic's collocation web site; (E) reclamation of collocation space; (F) reduction of Bell Atlantic's administrative space; (G) virtual collocation; (H) availability of pre-application information; and

(I) alternatives to traditional physical collocation.

#### A. CLEC Requests For Space

The FCC declined to adopt specific provisioning intervals in its Advanced Telecommunications Capability Order but encouraged states to do so. See Advanced Telecommunications Capability Order at ¶ 54. The Department directs that within five business days of receiving an application from a CLEC requesting space for physical collocation, Bell Atlantic shall notify the CLEC whether the application is sufficiently complete for Bell Atlantic to process the CLEC's request. If Bell Atlantic makes the determination that the CLEC's application is complete or sufficiently complete, Bell Atlantic shall, within ten business days of receipt of the application, inspect the CO that is the subject of the application and inform the requesting CLEC in writing whether Bell Atlantic can accommodate the request for space. While not bound by the FCC's suggestions for specific intervals in its Advanced Telecommunications Capability Order, for the reasons set forth below, we find that ten business days is a reasonable interval. See Advanced Telecommunications Capability Order at ¶ 55 (finding that ten days is a reasonable time period within which to inform a new entrant whether its collocation application is accepted or denied).

Bell Atlantic argues that the Department should allow a 14 business day response time because that is the interval negotiated between AT&T and Bell Atlantic and is the same as that adopted by the arbitrator in the MCI/Bell Atlantic arbitration proceeding.<sup>(10)</sup> We do not find Bell Atlantic's argument persuasive. The agreements referenced by Bell Atlantic were negotiated or arbitrated approximately three years ago. Since that time, there has been an increase in collocation requests.<sup>(11)</sup> Because Bell Atlantic inspects its COs with greater frequency than it did three years ago, Bell Atlantic's burden to update the information necessary to provide a response will be correspondingly lighter. The Department notes that this trend may be evidenced by Bell Atlantic's initial request made in D.P.U./D.T.E. 96-83 for 30 business days to respond to a request from MCI for physical collocation space compared with the eight business day response interval it announced in Bell Atlantic North's<sup>(12)</sup> collocation guide for CLECs, published in October 1998 (See Order on Exceptions, Attachment A, Award of July 28, 1997 at 5; Exh. DTE-32).

The Department agrees with AT&T and the other CLECs that 14 business days is unnecessarily long for a response and is persuaded by the timing in Bell Atlantic North's CLEC collocation guide. This collocation guide indicated that Bell Atlantic can perform the required review in a shorter period of time (Sprint Brief at 3; AT&T Reply Brief at 4-5; MCI Reply Brief at 3-4). As mentioned by AT&T in its petition, this ten business day interval "will ensure that CLECs receive proper and timely notice . . . permit[ing] a CLEC to address the need for altering its network development plans" (Exh. DTE-84 at 9-10). The Department finds that ten business days is adequate for Bell Atlantic to inspect its CO and to inform the requesting CLEC whether physical collocation space is available.

While we recognize that the increase in collocation requests may in some ways reduce the amount of work necessary to process such requests (i.e., for COs where Bell Atlantic has received multiple physical collocation requests, Bell Atlantic will merely have to update information already gathered for its evaluation), we are sensitive to Bell Atlantic's concerns about constraints on its resources should it be inundated with collocation requests. Because we agree that there are circumstances beyond Bell Atlantic's control that may hinder Bell Atlantic's ability to process physical collocation applications within the ten business day interval set forth in this Order, Bell Atlantic may request, at any time, an extension of the response period. The Department may grant such extensions to Bell Atlantic on a case-by-case basis. In deciding whether we would grant Bell Atlantic's request for an extension, the Department will consider, among other things, the number of physical collocation applications received by Bell Atlantic prior to its request for an extension.

The FCC's "first-come, first-served" policy<sup>(13)</sup> is silent on how incomplete applications are to be handled by ILECs. The Department is concerned that Bell Atlantic's current practice, as described in exhibit DTE-2, enables or could enable carriers to file incomplete applications knowingly as placeholders at desirable

COs that have a limited amount of space, and agrees with Bell Atlantic that "some hard-and-fast rules" are a good idea should a debate arise over space in a CO (see Tr. at 167). In the interest of seeing that the finite amount of space at Bell Atlantic's COs is used as efficiently as possible, the process set forth below will ensure that filing abuses do not occur and will encourage CLECs to submit completed applications.

If Bell Atlantic determines that the information contained in the CLEC's application is not sufficient for Bell Atlantic to process the request for space, it shall inform that CLEC, in writing, of the deficiencies within five business days of receipt. After receiving Bell Atlantic's written notice that its application is incomplete, the CLEC shall have ten business days to respond to those deficiencies without losing its place in the collocation queue at that CO. If Bell Atlantic does not receive the necessary information from that CLEC within this ten-day period, Bell Atlantic shall offer collocation space to the next CLEC, if any, that has filed a completed application during this period requesting space at the same CO.

#### B. Lack of Space for Physical Collocation

The FCC directs ILECs to inform state commissions when space exhaustion occurs at their COs.<sup>(14)</sup> Moreover, the FCC rules expressly permit state commissions to impose certain requirements on ILECs with respect to this notification.<sup>(15)</sup> The Department directs Bell Atlantic to notify the Department when it cannot accommodate a request for physical collocation because of space exhaustion at a particular CO. Notification is due within fifteen business days of conducting an inspection of that CO. In its notification filing, Bell Atlantic shall include any and all floor plans and diagrams it has of the CO.<sup>(16)</sup> Bell Atlantic shall inform the Department whether it is reserving space for itself, any affiliate or subsidiary, and, if so, how much space. This filing shall include an analysis of the CO equipment space, including a description of any obsolete or unused equipment in the CO (see Tr. at 131), and the environmental, safety, security and other factors involved in determining that space is unavailable (see Bell Atlantic Brief at 4).

In addition, Bell Atlantic shall detail future plans for reclamation of space or potential expansion opportunities that may result in available space (id.). Bell Atlantic shall also provide the number of CLECs, if any, with physical collocation space at that CO, the amount of space each CLEC was awarded, and when the CLEC was granted space. Finally, if applicable, Bell Atlantic shall state whether the CLECs with space at that CO have constructed cages, have placed equipment in the cages and, to the best of Bell Atlantic's knowledge, whether that equipment appears to be in use. Bell Atlantic raises reasonable confidentiality concerns. In lieu of providing the names of CLECs with collocation space in this notification filing, Bell Atlantic shall refer to CLECs anonymously.

The petitioner and several intervenors recommend that the Department adopt either an eight or ten business day rule for this filing (AT&T Brief at 12-14; MCI Brief at 14-15; Sprint Brief at 4), whereas Bell Atlantic requested a twenty business day period (Bell Atlantic Brief at 10). For the reasons provided below, the Department finds that a fifteen business day interval is an adequate amount of time for Bell Atlantic to gather the requisite information and that the benefit of providing Bell Atlantic with a few additional days to produce an accurate and thorough document outweighs any potential harm to a CLEC created by our decision to provide Bell Atlantic with five days more than what was recommended by several CLECs. All parties will be better served by ensuring Bell Atlantic makes a complete notification filing in support of its claim of space exhaustion.

The Department rejects the argument made by several parties that Bell Atlantic could make its notification filing with the Department simultaneous with its response denying physical collocation space to a CLEC since it would merely entail a formalization of information already compiled to process the CLEC's request (AT&T Brief at 13; Sprint Brief at 4). The Department is persuaded by Bell Atlantic's claim that it does not necessarily formally document all of the data to be included in its notification filing with the Department when it determines that it cannot fulfill a CLEC's request for space (Bell Atlantic Reply Brief at 4). However, because we find that Bell Atlantic will readily have much of the information required for the notification filing available to it after conducting the CO inspection, we also reject Bell Atlantic's request for 20 business days. Fifteen business days after inspecting the CO that is the subject of a CLEC's request is a reasonable period of time to make this filing.

### C. Tour of Bell Atlantic's CO

For any CO where Bell Atlantic claims it cannot accommodate a CLEC's physical collocation request because of a lack of space, the petitioner and several intervenors advocate a tour by an "audit team" consisting of Department staff, CLEC representatives, and Bell Atlantic personnel (Exh. ATT-1, at 12-14; MCI Brief at 15-17; Sprint Brief at 5-6). Bell Atlantic opposes the audit team concept but stresses that Department staff may tour its COs at any time (Bell Atlantic Reply Brief at 5-6). The Department does not have the resources to conduct site visits for every CO where Bell Atlantic claims space exhaustion. Moreover, the Department may not have the necessary expertise to analyze Bell Atlantic's organization of its COs during a site visit. However, we find independently of, but consistent with, the FCC that it is essential that the denied CLEC be provided the opportunity to tour Bell Atlantic's CO at a mutually agreed upon time, but no later than ten business days after Bell Atlantic denies the CLEC's request, unless both parties agree to a later date. See Advanced Telecommunications Capability Order at ¶ 57.

After the inspection, if the CLEC disputes Bell Atlantic's conclusion of inadequate space for physical collocation, it shall inform Bell Atlantic of the dispute within five business days of the inspection. If no resolution occurs, the CLEC and Bell Atlantic may each seek a determination by the Department. To do so, each must file a report explaining why the Department should agree with its position. These filings shall be made within ten business days of the joint inspection, and the Department shall decide the issue of space availability on the basis of these filings. An aggrieved party may file a petition contesting the Department's findings pursuant to M.G.L. c. 30A, §10. At the Department's discretion, Department staff may inspect the CO at issue to assist the Department in its determination.

#### D. Collocation Web Site Information

Bell Atlantic proposes to establish a collocation web site to inform CLECs whether physical collocation is available at its Massachusetts COs (Bell Atlantic Brief at 13-14). The petitioner and several intervenors recommend that Bell Atlantic be directed to include additional information, such as the amount of space available for physical collocation at the COs where Bell Atlantic has received a request for collocation (AT&T Brief at 17-18; MCI Brief at 11). In its Advanced Telecommunications Capability Order the FCC directs ILECs to post on the Internet a publicly available document "indicating all premises that are full, and . . . [to] update such a document within ten days of the date at which a premises runs out of physical collocation space." Advanced Telecommunications Capability Order at ¶ 58.

The Department determines that requiring Bell Atlantic to provide information in addition to what Bell Atlantic planned for its Internet site, and what the FCC requires, will enable the CLECs to make more efficient business decisions. Providing CLECs with this information may, in turn, lighten Bell Atlantic's workload by reducing the number of applications it receives at various COs. The additional information we require to be posted on Bell Atlantic's Internet web site is consistent with the reporting requirements contained in the Advanced Telecommunications Capability Order at ¶ 58 (directing ILECs to submit to a requesting carrier within ten days of the request a report indicating the amount of collocation space available at each requested premise, the number of collocators, any modifications in the use of the space since the last report, and any measures the ILEC is taking to make additional space available for collocation).

Bell Atlantic's web site shall state whether physical collocation is available in each of its COs. For those COs where it has received at least one request for physical collocation, Bell Atlantic shall post a dated statement on its web site indicating the amount of space it estimates is available for collocation. While Bell Atlantic need not conduct inspections for the sole purpose of updating information on its web site, if it does inspect a CO or takes action materially affecting the amount of available space at a CO (e.g., award space to a CLEC,



construct an addition to the CO), it shall update the applicable information on its web site within ten business days of taking that action.

The Department understands Bell Atlantic's point that posting the available floor space at certain COs on its web site could create a "run" on that space (Bell Atlantic Brief at 14), but the risk appears exaggerated and perhaps without real consequence. On balance, the public interest is best served by the general and timely availability of all of this important information. Moreover, the reclamation process the Department establishes below, in addition to the process provided for in Bell Atlantic's FCC No. 1 tariff, should effectively deter the hoarding of collocation space by CLECs.

#### E. Reclamation of Space

While the petitioner and several intervenors recommend that the Department not address the issue of whether, and under what circumstances, awarded collocation space may be reclaimed in this proceeding (AT&T Brief at 19; MCI Brief at 19), we must do so. Even after the measures contained in this Order are implemented, the problem of collocation space exhaustion in Massachusetts may well worsen.<sup>(17)</sup> We find that it is important to promote efficient use of collocation space at COs to increase competition in the local telephone market. To that end, the Department establishes a process whereby Bell Atlantic or a CLEC may petition the Department to institute a reclamation proceeding against a CLEC that has not constructed a cage or placed functional equipment in that cage within six months of the award of space.

Although the FCC did not address the issue of reclamation of space in its Advanced Telecommunications Capability Order, the six-month interval we include here is contained in Bell Atlantic's FCC No. 1 tariff (allowing Bell Atlantic to reclaim after six months customer space that is "not being efficiently used") and in an earlier FCC Order.<sup>(18)</sup> Instituting reclamation proceedings does not necessarily mean the Department will in fact authorize Bell Atlantic to take back that space for future use by other CLECs. The CLEC controlling that space will have an opportunity to demonstrate "compelling reasons" why it has not used the space. Among the factors the Department will consider before reaching a decision is whether any action of Bell Atlantic has impeded a CLEC's ability to use its collocation space.

Bell Atlantic or a CLEC may also petition the Department to investigate whether CLECs that have merged should be required to consolidate their collocation space at a particular CO with space constraints. Creating this process recognizes the significant consolidation occurring in the telecommunications industry and the reality that a post-merger carrier may no longer need multiple cages at a CO to serve its customers.

#### F. Reduction of Administrative Space

AT&T asserts that before denying a CLEC physical collocation space, Bell Atlantic should always reduce or eliminate administrative space (Tr. at 38-41; AT&T Brief at 14). Bell Atlantic argues that such a policy may detrimentally affect service to its customers (Exh. DTE-20). AT&T's assertion goes too far. Instead, the Department directs Bell Atlantic, when conducting CO inspections, to evaluate ways to reduce or eliminate administrative space. When Bell Atlantic files a notification of space exhaustion at a CO, it must certify in this filing that no administrative space could be reduced and provide a detailed explanation of this conclusion. In addition, if, after denying physical collocation space at that CO, Bell Atlantic reduces or eliminates administrative space and converts it to space suitable for collocation, it must inform all denied CLECs of the change in status within five business days of taking that action. This notification will provide those CLECs with information that may result in their re-application for physical collocation space at that CO.

#### G. Virtual Collocation

The petitioner has requested that the Department set deadlines by which Bell Atlantic must consider applications for virtual collocation (AT&T Brief at 18). Bell Atlantic asserts that such an action is outside the scope of this proceeding (Bell Atlantic Reply Brief at 9). We agree with Bell Atlantic and note that the overwhelming majority of the record upon which we make the decisions in this Order concerns physical, not virtual, collocation.<sup>(19)</sup> More importantly, the Department's Order of Notice characterized AT&T's petition as requesting the Department to "create procedures by which the [ILEC] shall consider and process a request from a [CLEC] for the physical collocation of equipment . . . as well as to require the ILEC to provide certain information to the Department regarding space at its [COs]" (emphasis added). Based upon this Order of Notice, parties would not have received sufficient notice, pursuant to the requirements contained in M.G.L. c. 30A, § 11(1), that issues involving virtual collocation would be determined in this proceeding.

#### H. Availability of CO Information Pre-Collocation Application

Sprint has requested that certain information be made available to CLECs prior to applying for physical collocation space at a particular CO (Sprint Brief at 7-8). Such information would include the average loop length, the percentage of loops longer than 18,000 feet from the CO, and the percentage of customers served by digital line concentrators (*id.*). Bell Atlantic argues that Sprint is seeking marketing information that Bell Atlantic may not necessarily have (Tr. at 163-164; Bell Atlantic Reply Brief at 9). The Department finds that the record is not sufficiently complete to rebut Bell Atlantic's argument that this information is unnecessary for requesting CLECs. Thus, the Department declines to direct Bell Atlantic to make this information available at this time.

- Alternatives to Traditional Physical Collocation

The Department encourages Bell Atlantic and CLECs to use technically feasible alternatives to traditional physical collocation if and when shortages of CO space occur. In its Advanced Telecommunications Capability Order, the FCC directs ILECs to make certain alternative collocation arrangements available to requesting carriers. See Advanced Telecommunications Capability Order at ¶¶ 39-45. Such alternatives include adjacent physical collocation, where CLEC equipment is placed at a building adjacent to or nearby the CO; shared collocation cages; and cageless collocation.<sup>(20)</sup> The Department finds that the record does not provide sufficient information with which to establish guidelines or additional requirements for these alternatives beyond those contained in the FCC's Advanced Telecommunications Capability Order. However, we note that in our recently issued Phase 4-K Order in the Consolidated Arbitrations, we directed Bell Atlantic to submit a compliance filing detailing how it will comply with the FCC's collocation directives contained in its Advanced Telecommunications Capability Order. See Consolidated Arbitrations, D.P.U. 96-73/74, 96-75, 96-80/81, 96-83, 96-94-Phase 4-K, at 27 n.28 (1999) ("Phase 4-K Order").<sup>(21)</sup> Bell Atlantic's compliance with the FCC's newly-established collocation requirements, coupled with the requirements we establish in this Order, should reduce significantly the existing impediments to obtaining interconnection and access to UNEs from Bell Atlantic through collocation.

#### J. Compliance Filing

We direct Bell Atlantic to submit a compliance filing within 14 days of this Order that identifies in detail its collocation obligations consistent with the findings of this Order and sets forth those obligations in proposed tariff pages for inclusion in Tariff No. 17.

### VI. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts respond to a request for physical collocation made by a competitive local exchange carrier ("CLEC") within ten business days of receipt of the CLEC's application.

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts inform a CLEC, within five days of receipt of the CLEC's application, of deficiencies preventing New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts from deciding whether space is available for that CLEC at the

central office; and that the CLEC shall have ten business days from receipt of such notification from New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts to remedy the application's deficiencies without losing its place in the collocation queue at that central office; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts notify the Department of space exhaustion at any of its central offices within fifteen business days of conducting an inspection of that central office; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts comply with all directives in this Order with respect to the content of its notification of space exhaustion filing; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts comply with all directives in this Order with respect to its collocation web site; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts or a CLEC may petition the Department to investigate whether New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts should institute a reclamation proceeding against a CLEC; and it is

FURTHER ORDERED: That New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts shall submit a compliance filing within 14 days of this Order that identifies in detail its collocation obligations under this Order and sets forth those obligations in proposed tariff pages for inclusion in Tariff No. 17; and it is

FURTHER ORDERED: That carriers shall comply with all other directives contained herein.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

1. Section 251(c)(6) of the Act imposes upon ILECs "the duty to provide . . . for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the [ILEC], except that the carrier may provide for virtual collocation if the [ILEC] demonstrates to the State commission that physical collocation is not practical for technical reasons or

because of space limitations." 47 U.S.C. 251(c)(6). Bell Atlantic is the ILEC in Massachusetts.

2. After initially being denied physical collocation space at the Westborough CO, TCG opted for virtual collocation. According to the Federal Communications Commission ("FCC"), in a virtual collocation arrangement, the competitor designates the equipment to be placed at the CO. However, the competitor does not have physical access to the CO; rather, the equipment is under the physical control of the ILEC and the ILEC is responsible for installing, maintaining, and repairing the competitor's equipment. See In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, FCC 99-48, at ¶ 19 n.27 (1999) ("Advanced Telecommunications Capability Order"). As of today, the Westborough CO is the only one in the Commonwealth with virtual collocation equipment, though as of December 1998, this equipment was not being used (Tr. at 115).

3. The parties provided their own position statements, including footnotes. For consistency purposes, the only edits made by the Department to these statements involve the abbreviations of parties and terms, the addition of citations, the correction of grammatical and typographical errors, and the addition of language to indicate that statements made are arguments of the parties and not conclusions of the Department.

4. D.P.U./D.T.E. 96-83.

5. Bell Atlantic argues that a limited exception to the 14 day interval should be an option on a negotiated, case-by-case basis in those instances when Bell Atlantic receives a large volume of requests.

6. Bell Atlantic argues that the audit team recommendation raises serious concerns regarding the Department's potentially adversarial role in the process, as well as the infringement on Bell Atlantic's due process rights and entitlement to an adjudicatory proceeding under M. G. L. c. 30A, §§10-11.

7. Exh. ATT-1, at 9-10.

8. In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499 (1996) (First Report & Order) ("Local Competition Order").

9. See note 2 above.

10. MCI/NYNEX Arbitration, D.P.U./D.T.E. 96-83 (June 16, 1998) (corrected version) ("Order on Exceptions").

11. According to Bell Atlantic, it has received over 300 requests for physical collocation in Massachusetts (Exh. BA-10; Tr. at 99).

12. The former NYNEX region of Bell Atlantic is sometimes referred to as "Bell Atlantic North."

13. 47 CFR 51.323(f)(1) provides that an ILEC shall make collocation space available to requesting CLECs on a first-come, first-served basis.

14. See Local Competition Order at ¶ 602.

15. Id.

16. 47 CFR 51.321(f) requires ILECs to submit to the State commission detailed floor plans or diagrams of any premises where the ILEC claims that physical collocation is not practical because of space limitations. The Department notes that it has only received the floor plans of Bell Atlantic's Westborough CO even though Bell Atlantic filed a letter with the Department on November 12, 1997 informing the Department that nine of its COs lacked space for physical collocation. Thus, under federal regulation, Bell Atlantic should immediately submit the remaining eight floor plans or diagrams to the Department.

17. Department staff has been informed by Bell Atlantic that since the December 1998 evidentiary hearing, space in approximately four more COs has been exhausted.

18. See In re Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, FCC 97-208, at ¶¶ 331-333 (June 13, 1997) (Second Report and Order).

19. If virtual collocation delays occur, the Department recommends in the strongest terms that the parties reach agreement on this issue. If problems arise in this area, the Department will serve as an informal mediator, and if mediation attempts prove unsuccessful, the Department will consider opening an investigation into virtual collocation procedures.

20. The FCC's ruling on cageless collocation reverses our findings in Covad/Bell Atlantic Arbitration, D.T.E. 98-21 (1998), in which the Department determined that the security risks of cageless collocation to the publicly-switched network outweighed any efficiency gain.

21. The Department received Bell Atlantic's compliance filing on May 28, 1999. Although responsive to the request made of it in the Phase 4-K Order, Bell Atlantic filed the revised tariff pursuant to a March 12, 1999 hearing officer ruling in D.T.E. 98-57.